

DD/A Registry
76-5408

OGC Has Reviewed

2 NOV 1976

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Review of Authority for Staffing Employee
Activity Functions

REFERENCE : OGC Memorandum 76-5678, dtd 14 Oct 76,
Same Subject

1. Action Requested: That you approve the continued assignment of employees, paid from appropriated funds, to the Coordinator function of the Employee Activity Association (EAA) and to the physical fitness room.

2. Background: The EAA coordinates various employee club, hobby, self-improvement, and sports activities to ensure that all Agency cover and employee security requirements are met. This is done by two administrative and two clerical employees of the Office of Personnel. The physical fitness room is staffed by one employee of the Office of Personnel who supervises its activities and maintains the exercise equipment. After a review of these activities earlier this year, the Audit Staff, Office of Inspector General, recommended that an opinion be solicited from the General Counsel concerning the legality of assigning to these functions employees who are paid from appropriated funds. The Office of General Counsel has responded (copy attached) that appropriated funds may be used for these purposes based on the unique security requirements of the Agency and the direct relationship between physical fitness and the duties assigned to Agency personnel.

3. Staff Position:

A. The EAA contributes substantially to the morale of Agency employees and offers them, in a secure manner, the programs and activities that are made available to employees of other Federal agencies. The physical fitness room (including the running track) provides exercise facilities for those employees whose duty assignments require the maintenance of

peak physical condition, and at the same time encourages all Agency employees to participate in exercise programs which are beneficial to their health. In the absence of assigned Agency personnel, these programs could no longer be continued.

B. In the legal opinion, the Office of General Counsel noted that administrative determinations have been made on several occasions by Agency officials that the expenses involved in providing these services are necessary for Agency functions and that, although a similar determination by the DCI or DDCI might be helpful in firmly establishing the propriety of the expenditure, such an additional determination is not required. We believe it appropriate to obtain such a determination by the DDCI.

4. Recommendation: That you approve the continued assignment of Agency employees, paid from appropriated funds, to the Coordinator function of EAA, and to the Agency's physical fitness room.

[Redacted Signature]

STATINTL

John F. Blake

Att

APPROVED: [Redacted Signature]

DISAPPROVED: _____

4 Apr. 76
Date

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Originator: [Redacted Signature]

Director of
Personnel
11/17/76

OP/BSD/ [Redacted Signature] :jp (27 Oct 76)

OGC 76-5678

14 October 1976

MEMORANDUM FOR: Director of Personnel

STATINTL

FROM :
Office of General Counsel

STATINTL

ATTENTION :

SUBJECT : Review of Authority for Staffing Employee
Activity Functions

1. Factual Situation: The Chief of the Audit Staff, Office of Inspector General, recommended in his Report of Audit, dated 5 May 1976, that the Director of Personnel solicit the opinion of General Counsel concerning the Agency's legal authority to assign five employees, paid from appropriated funds, to the EAA coordinator function and the physical fitness room. The staff assigned to the EAA coordinator function consists of two administrative and two clerical employees. It is their duty to coordinate the sports, social and other activities of the EAA in order to ensure that all Agency cover and personnel security requirements are met in employee group relationships with non-Agency persons and organizations. The staff assigned to the physical fitness room consists of only one employee whose duty it is to supervise the activities in the room and to maintain the equipment installed in the room. The Director of Personnel has requested an Opinion of General Counsel reviewing and establishing the legal authority for staffing the above-described employee activities.

2. Issue Presented: May the Director of Personnel legally authorize the assignment of Agency personnel paid from appropriated funds to the EAA coordinator function and the physical fitness room?

3. Conclusion: Yes. Appropriated funds may be used to pay Agency personnel assigned to the EAA coordinator function and the physical fitness room, based upon the unique security requirements of the Agency and the direct relationship between physical fitness and the duties assigned to Agency personnel.

4. The Use of Appropriated Funds for Purely Recreational Activities: It is provided in 31 U.S.C.A. section 628 that appropriated funds can be used for no other purpose than that for which they were appropriated.

Except as otherwise provided by law, funds appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

This statute has been traditionally interpreted to proscribe the use of appropriated funds for recreational activities. The landmark decision in this regard is found at 18 Comp. Gen. 147 (A-96933, 10 August 1938) in a memorandum to the Secretary of War concerning recreational facilities of Midway Island. There it was stated:

While the furnishing of recreational facilities may be highly desirable, particularly in a place such as referred to in your letter, they constitute expenses which are personal to the employees and which are not permitted to be furnished from appropriated funds unless provided in the appropriation either specifically or by necessary implication. Id. at 147.

See also B-49169 (5 May 1945, unpublished) and B-37344 (14 October 1943, unpublished).

It was subsequently held at 27 Comp. Gen. 679 (B-73234, 12 May 1948) that the prohibition applied to personnel as well as facilities. In that case the Comptroller General refused to permit:

...The employment of personnel, to be paid from appropriated funds, to plan and to administer recreational and entertainment programs. Id. at 681.

It is therefore quite clear that appropriated funds cannot be used for purely recreational activities.

5. The Use of Appropriated Funds for Non-Specified but Essential Activities: Although appropriated funds cannot be used for purely recreational activities, the more modern and enlightened view is that physical fitness activities may be supported through the use of appropriated funds where such expenditure is essential to the mission for which the funds were appropriated. This policy was established in 27 Comp. Gen. 679, supra. That decision, although holding that appropriated funds could not be expended for purely recreational activities, went on to state quite significantly as follows:

It may be stated as a general rule that the use of appropriated funds for objects not specifically set forth in the appropriation act but having a direct connection with and essential to the carrying out of the purposes for which the funds were appropriated is authorized. Id. at 681.

This policy blossomed into full flower in 51 Comp. Gen. 797 (B-86148, 6 June 1972), overruling and reversing B-86148, 8 November 1950. This decision has subsequently been cited with approval in the most recent decisions of 55 Comp. Gen. 307; B-185591 (5 May 1976); and B-130082 (20 July 1976). This decision approved the use of appropriated funds for incentive-type MUZAK music. The decision stated:

Also, it was pointed out that a large number of private industries used incentive music thereby indicating that such firms must have found that the music resulted in increased production and reduced costs. Upon re-examination of our earlier decision we now are inclined to agree that the considerations in that case presented a reasonable basis for the administrative view that expenditures for incentive music constituted 'necessary expenses' under the appropriation there involved. Accordingly, since the Commissioner [Bureau of Public Debt] has determined that--based on factors such as the improvement of employee morale, increased employee productivity and resulting savings to the government--the proposed expenditures constitute 'necessary expenses' of the Bureau, we will not now question such a determination. Id. at 798-9.

If music can be adjudged a necessary expense associated with an appropriation, then most certainly can the EAA coordinator function and the physical fitness room be similarly adjudged.

6. The EAA Coordinator Function and the Physical Fitness Room as Essential to the Mission of the CIA: On several occasions it has been administratively determined within the Agency that the EAA coordinator function and the physical fitness room are necessary to the effective functioning of the CIA. In a Memorandum from General Counsel Lawrence R. Houston to the ADDA, Dated 16 November 1951 and entitled, "Use of Appropriated Funds for Recreational Activities," Mr. Houston stated:

...Justification for this Agency to expend funds for this purpose [recreational equipment or supervision] must be based upon unique operations, which could take us out of the purview of the decisions. Security considerations are the most likely

justification. Another factor supporting such an expenditure would be the need for physical fitness in the particular duties for which the personnel were slated.

A Memorandum from the Director of Personnel Emmett D. Echols to the DDS, dated 16 March 1962, similarly found a need for such facilities.

We have found that security considerations are apt to inhibit many of our employees from normal participation in outside community affairs. The Agency should fill this void by making it possible for people to pursue their interests 'within the family' where security restrictions can be relaxed.

Similar administrative determinations have been made by the Director of Personnel (1976) and the Deputy Director for Support (1967).

In light of the need to justify these expenditures, the following considerations appear to be overriding:

a. Security Considerations--

- (1) The protection of cover for Agency personnel.
- (2) The prevention of identification of Agency personnel.
- (3) The protection of Agency personnel.
- (4) The supervision of outside employee contacts.

b. The need for physical fitness in employees' job performance.

c. The improvement of employee morale.

d. Increased employee productivity and resulting savings to the Government.

e. An administrative determination that the expense is necessary for Agency functions by the Director of Personnel (1976), the Director of Personnel (1962), the Deputy Director for Support (1967), and the General Counsel (1951). Although a similar determination by the DCI or the DDCI might be helpful in firmly establishing the propriety of the expenditure, such an additional determination is not required.

f. A finding that physical fitness, increased employee productivity, and the protection of Agency personnel are directly connected with and essential to the purposes for which Agency funds are appropriated.

g. Provisions for employee security and physical fitness are a necessary implication of the CIA appropriation statutes.

h. Provisions for employee security and physical fitness are a "necessary expense." 51 Comp. Gen. 797.

7. The Authority of the DCI to Authorize the Use of Appropriated Funds for Necessary Purposes: The DCI has been authorized by several statutes and Executive Orders to expend appropriated funds for the purposes covered in this Opinion; that is, for the protection of Agency personnel, the maintenance of proper security, and the physical preparedness of Agency personnel. Executive Order 11905, section 4(b)(8) states that:

...the Central Intelligence Agency shall: ...protect the security of its installations, activities, information and personnel.

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It may therefore be stated that security and personnel requirements require the continued use of appropriated funds for the EAA coordinator function and the physical fitness room.

STATINTL